

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$6,043.46, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period March 1, 2016 through May 25, 2019 without an appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$100.00 from appellant's continuing compensation payments, every 28 days.

### **FACTUAL HISTORY**

On July 22, 1991 appellant, then a 37-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral upper extremity conditions as a result of her repetitive employment duties. OWCP accepted the claim for bilateral carpal tunnel syndrome. Appellant stopped work on June 5, 1991 and received intermittent wage-loss compensation benefits. She returned to work on August 18, 1991, but stopped work again on May 13, 1992 due to left carpal tunnel release surgery and did not return. Appellant received wage-loss compensation for temporary total disability on the supplemental rolls for which she was placed on the periodic rolls effective June 16, 2002.

By letter dated April 12, 2017, OWCP advised appellant that FECA requires that her continuing compensation benefits be reduced if she begins receiving SSA age-related retirement benefits based on her federal service. It indicated that she should advise OWCP immediately if she had been approved for, or was currently receiving, SSA age-related retirement benefits as her records indicated that she had turned 62, the minimum age at which an individual is eligible to receive SSA retirement benefits, within the last five years.

On April 11, 2019 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form.

On April 15, 2019 SSA completed the dual benefits calculation form, which listed appellant's SSA benefit rates with a FERS offset and without a FERS offset from March 2016 through January 2019. Beginning March 2016, the SSA rate with FERS was \$606.00 and without FERS was \$453.30. Beginning December 2016, the SSA rate with FERS was \$608.00 and without FERS was \$454.60. Beginning December 2017, the SSA rate with FERS was \$620.00 and without FERS was \$463.70. Beginning December 2018, the SSA rate with FERS was \$637.00 and without

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the July 17, 2019 decision, OWCP and the Board received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FERS was \$476.70. Beginning January 2019 the SSA rate with FERS was \$637.00 and without FERS was \$476.70.

On May 21, 2019 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's overpayment from March 1, 2016 through May 25, 2019. The total overpayment was determined to be \$6,043.46.

In a letter dated June 4, 2019, OWCP notified appellant that, based on information provided by SSA regarding the amount of her age-related retirement benefit which was partially attributable to federal service, her FECA wage-loss compensation had been adjusted. It explained that she was in receipt of FECA benefits every four weeks amounting to \$2,072.00. However, appellant's federal service increased her monthly social security payment by \$148.43, which must be offset against her compensation benefits. OWCP explained that her compensation payments would be offset by the portion of her SSA retirement benefits attributable to her federal service on account of age, resulting in a new net compensation payment of \$1,923.57, every 28 days. Appellant's compensation payments were adjusted effective May 26, 2019.

On June 11, 2019 OWCP issued a preliminary determination finding that an overpayment of compensation in the amount of \$6,043.46 had been created. It explained that the overpayment occurred because her FECA benefits were not reduced by the FERS portion of her SSA age-related retirement benefits for the period March 1, 2016 through May 25, 2019. OWCP found appellant without fault in the creation of the overpayment and forwarded an overpayment action request form and overpayment recovery questionnaire (Form OWCP-20). It requested that she provide supporting documentation including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records which supported income and expenses. OWCP afforded appellant 30 days to respond.

In an overpayment action request form dated June 27, 2019, received on July 2, 2019, appellant contested fact of overpayment, the amount of the overpayment, and requested a waiver of recovery because she was without fault in the creation of the overpayment. She argued that an overpayment had not been created because she was informed by SSA personnel that an offset only occurs for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) which she did not receive. Appellant explained that she was in receipt of Social Security age-related retirement benefits and upon receiving her first SSA check, she was informed by both OWCP and SSA that her benefits would not change.

In an accompanying June 27, 2019 letter, appellant reported that upon receiving OWCP's May 30 and June 4, 2019 letters informing her that she was in receipt of dual FERS and SSA benefits without an appropriate offset, she contacted SSA and was informed that there was no information in her file which indicated that it had contacted OWCP regarding an offset. SSA further explained that an offset would only occur if she was in receipt of SSI or SSDI benefits. Appellant reported calling the claims examiner to relay the information provided by SSA and requested that he look into the matter further as her research also indicated that her social security retirement benefits did not create an offset. She explained that before providing OWCP with any more of her personal and financial information, she would like them to investigate the matter further.

By decision dated July 17, 2019, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$6,043.46 for the period March 1, 2016 through May 25, 2019, because it failed to offset her compensation payments by the portion of her SSA age-related benefits that were attributable to her federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment of compensation because she failed to provide any of the financial information requested. OWCP concluded that there was no evidence to substantiate that recovery of the overpayment would either defeat the purpose of FECA or be against equity and good conscience. It indicated that the overpayment would be recovered by withholding \$100.00 from her continuing compensation payments every 28 days.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.<sup>4</sup> Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>5</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-based benefits that are attributable to federal service of the employee.<sup>6</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$6,043.46, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period March 1, 2016 through May 25, 2019.<sup>8</sup>

In its July 17, 2019 decision, OWCP found that an overpayment of compensation was created for the period March 1, 2016 through May 25, 2019. The overpayment was based on the evidence that, while appellant was receiving compensation for total disability under FECA, she was also receiving SSA age-based retirement benefits. A claimant cannot receive both compensation for wage-loss and SSA age-related retirement benefits attributable to federal service

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *see L.J.*, 59 ECAB 264 (2007).

<sup>7</sup> FECA Bulletin No. 97-09 (February 3, 1997).

<sup>8</sup> *T.B.*, Docket No. 18-1449 (issued March 19, 2019).

for the same period.<sup>9</sup> The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period March 1, 2016 through May 25, 2019. Consequently, the fact of overpayment has been established.<sup>10</sup>

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided the SSA rates with FERS, and without FERS for specific periods commencing March 1, 2016 through May 25, 2019. OWCP provided its calculations for each relevant period based on the SSA worksheet. No contrary evidence was provided.

When contesting OWCP's June 11, 2019 preliminary determination, appellant asserted that the SSA retirement benefits did not create an overpayment of compensation based on information on websites governing state and local regulations. However, as noted above, FECA governs the implementing regulations, which provide that benefits have to be adjusted for the FERS portion of SSA age-related retirement benefits due to a prohibited dual benefit.<sup>11</sup>

The Board has reviewed OWCP's calculation of benefits received by appellant for the period March 1, 2016 through May 25, 2019 and finds that an overpayment of compensation in the amount of \$6,043.46 was created.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>13</sup> The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>14</sup>

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do

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<sup>9</sup> See *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

<sup>10</sup> *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

<sup>11</sup> *Supra* note 7.

<sup>12</sup> See *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

<sup>13</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; see *A.S.*, Docket No. 17-0606 (issued December 21, 2017).

<sup>14</sup> See *Robert Atchison*, 41 ECAB 83, 87 (1989).

not exceed a specified amount as determined by OWCP.<sup>15</sup> Additionally recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>16</sup>

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>17</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the \$6,043.46 overpayment of compensation.<sup>19</sup>

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>20</sup> Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.<sup>21</sup>

In its preliminary determination dated June 11, 2019, OWCP explained the importance of providing the completed overpayment questionnaire and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. Appellant, however, did not submit a completed Form OWCP-20 or provide any financial documentation supporting her income and expenses.<sup>22</sup> As a result, OWCP did not have the necessary financial information to determine if recovery of

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<sup>15</sup> 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

<sup>16</sup> *Id.* at § 10.437(a)(b).

<sup>17</sup> *Id.* at § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

<sup>18</sup> *Id.* at § 10.438(b).

<sup>19</sup> A.C., Docket No. 18-1550 (issued February 21, 2019).

<sup>20</sup> 20 C.F.R. § 10.436.

<sup>21</sup> *Id.* at § 10.438; *see N.J.*, Docket No. 19-1170 (issued January 10, 2020).

<sup>22</sup> *R.M.*, Docket No. 19-1570 (issued June 1, 2020).

the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.<sup>23</sup> The Board thus finds that OWC, properly denied waiver of recovery of the overpayment.<sup>24</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provides that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.<sup>25</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$100.00 every 28 days from appellant's continuing compensation payments.<sup>26</sup>

OWCP provided appellant a Form OWCP-20 with the June 11, 2019 preliminary determination. Appellant did not complete the overpayment recovery questionnaire or provide the necessary financial information to support her income and expenses prior to the final July 17, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>27</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>28</sup> The FECA procedure manual provides that in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>29</sup> While appellant did not submit the financial information requested, the record reflects that her continuing 28-day compensation amounts to \$1,923.57. Therefore, deducting \$100.00 every 28 days from her continuing compensation is not in excess of the 25 percent repayment rate.<sup>30</sup>

As appellant did not submit the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in requiring recovery of the

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<sup>23</sup> *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

<sup>24</sup> 20 C.F.R. § 10.438; *see L.D.*, Docket No. 19-0606 (issued November 21, 2019).

<sup>25</sup> *Id.* at § 10.441(a); *see Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>26</sup> *L.D.*, Docket No. 19-1423 (issued March 2, 2020).

<sup>27</sup> 20 C.F.R. § 10.438. *See also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>28</sup> *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

<sup>29</sup> Federal (FECA) Procedure Manual, *supra* note 15 at 6.500.8(c)(1) (September 2018).

<sup>30</sup> *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

\$6,043.46 overpayment by deducting \$100.00 every 28 days from appellant's continuing compensation payments.<sup>31</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$6,043.46, for which she was without fault, as she concurrently received SSA age-related retirement benefits while receiving FECA wage-loss compensation benefits for the period March 1, 2016 through May 25, 2019. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$100.00 from her continuing compensation payments every 28 days.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 28, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>31</sup> *M.D.*, Docket No. 19-1500 (issued February 24, 2020).